

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TN

CONSUMER ADVOCATE DIVISION

v.

BELLSOUTH TELECOMMUNICATIONS,
INC.

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) DOCKET NO. 00-00041

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CONSUMER ADVOCATE DIVISION RESPONSES
TO BELLSOUTH TELECOMMUNICATIONS, INC.'S
DATA REQUEST

The Consumer Advocate Division and its counsel assert and invoke their privileges regarding detailed legal basis or theory and work product. The Consumer Advocate Division and counsel objects to any and all discovery propounded by BellSouth which requests the same. Response to the valid part of associated discovery does not waive and is not intended to waive the assertion of the privilege.

- 1. Does the CAD contend that BellSouth does not incur costs when its customers do not pay for services that are provided by third parties and billed by BellSouth? If so, please explain in detail the factual and legal basis for your contention, identifying all facts supporting your contention, and producing all documents supporting you contention.**

Yes. **Incur** means: To have liabilities cast upon
one by act or operation of law, **as distinguished**

from contract, where the parties act affirmatively.

To become liable or subject to, to bring down upon oneself, as to incur debt, danger, displeasure and penalty, and to become through one's own action liable or subject to. Black's Law Dictionary.

BellSouth's "liabilities" arise through contract, not operation of law. Moreover, BellSouth's profit, i.e. the amount it receives from customers in excess of the amount of liabilities plus its right of recourse assures that there is no remaining penalty to the company.

Furthermore, its "Customers," under BellSouth's purchase of accounts and bill processing service, are CLEC's or clearinghouses, not end users of the CLEC's. BellSouth's costs are its payment to purchase accounts, if any. BellSouth has full recourse regarding services of end users not paid for by end users. Tennessee consumers object to any assertion that customers, if customers are intended to mean end users of third party providers, are BellSouth's customers. The contracts

clearly do not permit BellSouth to assert that third party end users are BellSouth's customers. The contracts do not provide any indicia that end users are intended to be BellSouth's customers for the purpose of ascertaining costs.

- 2. Is the CAD aware of any consumer complaints regarding BellSouth's proposed late payment charge? Is so, please identify in detail the nature of each such complaint and the persons or entity who registered each such complaint, and please produce all documents related to or arising out of each such complaint.**

This office did receive one phone call complaining about the proposed late payment charge. The office, however, did not record the time, date and person making the complaint. In addition we received or were made aware of information from the Tennessee Regulatory Authority regarding numerous complaints or complainants. These documents are in possession of the Tennessee Regulatory Authority. This office did not assist in the resolution of those complaints.

- 3. Please identify each and every person who provides answers to or otherwise participates in responding to each of these Data Requests.**

L. Vincent Williams, Tim Phillips, Mike Chrysler, and Terry Buckner.

4. **Does the CAD contend that any of BellSouth's billing agreements with other telecommunication companies or clearing houses does not allow BellSouth to charge its proposed late payment charge to the consumer, in the event a consumer pays the bill late? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.**

Yes. The billing agreements are ambiguous. They do not distinguish between the payment of any late payment charge associated with the underlying end user service agreement and a late payment charge which is not connected with the end user service agreement. Even if the billing agreement purported to authorize BellSouth to implement an independent charge on end users it would be unlawful. BellSouth's contract with the CLEC was never a part of any agreement with the end user.

Neither the clearinghouse or any CLEC was granted authority by any end user which permitted the clearinghouse or CLEC to obligate them to BellSouth except for payment for those

services.

- 5. Does the CAD contend that any of BellSouth's billing arrangements with other telecommunications companies or clearinghouses prohibits BellSouth from charging its proposed late payment charge to the consumer, in the event a consumer pays the bill late? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, identify all facts supporting your contention, and produce all documents supporting your contention.**

Yes. See the responses above. The contracts do not authorize purely independent charges by BellSouth.

Although the underlying end user may possibly be responsible for a late charge arising from the service agreement between the CLEC and the end user. That late charge amount, if any, should be expressly stated to the end user prior to the provision of service (not retroactively) and is the late charge due the CLEC or clearinghouse under the service agreement and of which the consumer has notice. It is not technically "its" (meaning BellSouth's) subsequent and independent proposed charge.

6. **Does the CAD contend that any of the billing agreements BellSouth provided in discovery in this docket make no provision, for late payment charges? If so, identify each and every such contract.**

Yes. The billing agreement with AT&T dated December 18, 1995.

7. **Does the CAD contend that any of the billing agreements BellSouth had provided in discovery explicitly prohibits BellSouth from imposing a late payment charge upon end users who do not pay their BellSouth bills before the next billing date?**

There are no "BellSouth bills" authorized under the billing agreements. The bills are the charges due the CLECs and the CLEC's or clearinghouses are named in the bills actually sent to end-users.

8. **If your response to Request No. 7 is anything other than an unqualified no, please identify each and every provision (citing to each applicable page and/or section number) of each and every contract the CAD contends explicitly prohibits BellSouth from imposing a late payment charge upon end users who do not pay their BellSouth bills before the next billing date.**

The contracts do not generally pertain to BellSouth bills, they pertain to the billing of another company's charges.

As a result no explicit prohibitions were found.

- 9. Does the CAD contend that the aggregate revenues for basic local exchange telephone services or non-basic services generated by the tariff at issue in this docket exceed the aggregate revenues generated by the maximum rates permitted by BellSouth's price regulation plan?**

BellSouth has failed to provide sufficient information to contend one way or the other. In the absence of sufficient information we do not take a position. We note however, that discovery relevant to this issue was resubmitted in accordance with the directive of the hearing officer. When the discovery sufficient to complete our evaluation is provided we will update this response.

- 10. If your response to Request No. 9 is anything other than an unqualified no, please:**

- (a) State the amount by which you contend the aggregate revenues for basic local exchange telephone services or non-basic services generated by the tariff at issue in this docket exceed the aggregate revenues generated by the maximum rates permitted by BellSouth's price regulation plan;**
- (b) Identify all facts supporting your contention; and**

(c) Produce all documents supporting your contention.

Responses to (a) - (c) See response to number 9.

11. Does the CAD contend that any of the billing arrangements BellSouth has provided in discovery provides that BellSouth will bill charges for services provided by third parties without purchasing the accounts receivable associated with such charges?

Yes. BellSouth contracts appear to contain a non-tariffed "bill processing service agreement."

12. If your response to Request No. 11 is anything other than an unqualified no, please identify each and every provision (citing to each applicable page and/or section number) of each and every contract the CAD contends provides that BellSouth will bill charges for services provided by third parties without purchasing the accounts receivable associated with such charges.

See answer to Q. 11. "Bill Processing Service Agreement" references were found in the following agreements. American Telnet, page 52 of 97; CommuniGroup page 52 of 97; Billing Concepts, pg. 51 of 97; PayTel Communications, p. 63 of 106; Touch 1 Communications, p. 59 of 101; Eclipse

Telecommunications, 52 of 97; ILD Teleservices, p. 61 of 104; HBS, p. 60 of 101; VarTec Telecom, Inc. p. 60 of 102, Global Tel*Link, p. 96; Integretel, p. 51 of 97; WorldxChange p. 52 of 97; Correctional Billing Services, 51 of 96.

BellSouth also provides "Flexible Invoicing Service" to on or more of these companies. See e.g. Global Tel*Link, p. 96.

- 13. Does the CAD contend that any of the billing contracts BellSouth has provided in discovery provides that BellSouth will bill charges for services provided by third parties without taking action to collect delinquent or unpaid amounts associated with such charges?**

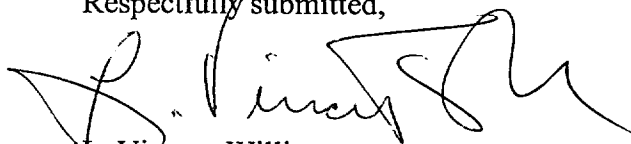
We did not note any mandatory provision associated with this discovery request one way or the other. Some contracts, however, expressly provide that BellSouth will not be involved in billing disputes. Other contract provisions suggest that BellSouth takes the same action BellSouth takes with its own end users (*as distinguished from the end users of the CLEC's*). As a result there appear to be standards undisclosed which may or may not result in billing delinquent or unpaid amounts. Tennessee consumers object to any

BellSouth reliance upon undisclosed policies and collections procedures.

- 14. If your response to Request No. 13 is anything other than an unqualified no, please identify each and every provision (citing to each applicable page and/or section number) of each and every contract the CAD contends provides that BellSouth will bill charges for services provided by third parties without taking action to collect delinquent or unpaid amounts associated with such charges.**

See previous response.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L. Vincent Williams", written over a horizontal line.

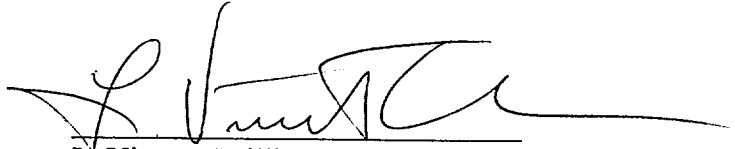
L. Vincent Williams
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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Response has been mailed postage prepaid to the parties listed below this 18th day of December, 2000.

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